IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.06.2007

Coram

The Honourable Mr. A.P. SHAH, CHIEF JUSTICE

and

The Honourable Mr. Justice P. JYOTHIMANI

W.P. Nos.8517, 8518, 9291, 42496, 46476 of 2006 and 12741, 12733, 11244, 1797, 22241, 10977, 10571, 10532, 10116, 2443, 13198, 11079, 15192, 12090, 2433, 8196, 11068, 12099, 12054, 3895, 3746, 3747, 4820, 4821, 4321, 10051, 1681, 5345, 5655, 9904 and 9905 of 2007

Misons Leather Ltd,
represented by its Managing Director
13. Kumarappa Street,
Periamet, Chennai-3. ... Petitioner in W.P.8517 of 2006

Misons Shoe Fabric Ltd,
represented by its Managing Director
13. Kumarappa Street,
Periamet, Chennai-3. ... Petitioner in W.P.8518 of 2006

Euro India Shoes (Madras)
Pvt. Ltd.,
represented by its
Director
13. Kumarappa Street,
**Periamet, Chennai-3.** ... Petitioner in W.P.9291 of 2006

1. K. Bhojan
Partner
Sreekal Tea Industry
Gattakanbai
Tuttapallam Post
Kotagiri.

2. Parvathy Bhojan
Partner
Sreekal Tea Industry
Gattakanbai
Tuttapallam Pot
Kotagiri.

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Petitioners 1 & 2 rep by their
power of Attorney Agent
Mr.B. Jagadeesh the 3rd Petitioner

3. B. Jagadesh
Partner
Sreekal Tea Industry
Gattakombai
Tuttapalayam Post
Kotagiri. ... Petitioner in W.P.42496 of 2006

T.W. Air Freight Madras Pvt Ltd,
II nd Floor,
"Vanguard" 48 2nd line beach Road,
Chennai-1.
represented by its
Managing director ... Petitioner in W.P.46476 of 2006

1. M/s. RBR A Funds
Door No.33/20 Ramalingam Layout
KPN Colony, 4th Street
Tirupur
by its Sole- Proprietor
Mr.R.P. Ramakrishnan

2. Mr.R.P. Pandurangan
S/o. Sr R. Pattabiraman Chettiar
Door No.33/20 Ramalingam Layout
KPN Colony, 4th Street
Tirupur

3. M/s. Vijaya Finance
Door No.33/20 Ramalingam Layout
KPN Colony, 4th Street
Tirupur
by its Sole Proprietrix
Smt. R.P. Parvatham ... Petitioner in W.P.12741 of 2007

M/s. Brindavan Tea & Industries
represented by its Managing Partner
B. Jairam
Nedugala, Kotagiri- 643 217 ... Petitioner in W.P.12733 of 2006

1. M/s. Ramco super Leathers Ltd,
Sethu House
No.28 Dr. Alagappa Road,
Chennai-84

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2. M/s. Rukmani Exports P. Ltd,
C-4 Rams Building,
No.21, Raja Annamalai Road,
Chenna-84

3. S.Ramasamy
4. S. Muthukaruppan
5. S. Palaniappan
6. PSL Property Development Ltd,
No.28 Alagappa Road,
Chennai-84 ... Petitioner in W.P.11244/2007
Petitioners 2, 1 and 5 in
W.P.8196/07

P. Sengottaiyan
sole Proprietor
Bharathy Sago Factory and
Bharathy Modern Rice Mill
Sarvoy Villate and Post
Attur Taluk, Salem District ... Petitioner n W.P.1797/2007

M/s. M.A. Ismail & Co
Rep by its Partner
Shabeer Ahmed
122, MBT Road
Ranipet. ... Petitioner n W.P.22241/2007

1.K. Muralidharan
2.Anantharaman
3.Pushpavalli
4.Sumathi
5.M. Puzhazhendhi
6.S. Ramabadran ... Petitioner n W.P.10977/2007

P. Parivallal ... Petitioner n W.P.10571/2007

Mrs. Muthulakshmi alias Lakshmi ... Petitioner n W.P.10532/2007

M/s. Anandha Ganapathy Mahal
Rep by thiru G. Rajagopal
No.390 Nagai Main Road
Thanjavur. ... Petitioner n W.P.10116/2007

1. M/s. Tamilnadu chormates and
Chemicals Limited
Rep by its Authorised Signatory
Mr.G. Sunderrajan

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109, Mahatma Gandhi Road,
4th Floor
Chennai-34.

2. Ashok Balasubramanian
3. Rajeswari Balasubramanian ... Petitioner in W.P.2443/2007

D. Selvaraj
Managing Partner
Sree Lakshmi Foundary
9/74 Uthupalayam Arasur
Coimbatore- 641 407. ... Petitioner n W.P.13198/2007

1. M/s. Ramco Super leathers Ltd,
rep by its Director,
(Formerly known as M/s. RSL Industries Ltd,
Sethur House
No.28 Dr Alagappa Road,
Purasawalkkam
Chennai-84 ... Petitioner 2 in W.P.8196/07
Petitioner 1 in W.P.11078/07

2. M/s. Rukmani Exports P.Ltd.,
rep by its Director
Sethur House
No.28 Dr alagappa Road,
Purasawalkkam
Chennai-84 ... Petitioner1 in W.P.8196/07
... Petitioner2 in W.P.11078/07

3. S. Ramaswamy ... Petitioner5 in W.P.8196/07
... Petitioner3 in W.P.11068/07
4. S. Palaniappan ... Petitioner5 in W.P.11068/07
5. R.M. Angammal
6. S. Kamalam
7. D. Muthukarupppan ... Petitioner4 in W.P.11068/07
8. M. Manimegalai ... Petitioners in
W.P.11079/2007

A.P. Veerappan ... Petitioner in
W.P.15192/2007

P. Muthu ... Petitioner in
W.P.12090/2007

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M/s. Sathya Foundations Private Ltd,
rep by its Director
C. Sathya Samuel
West Tambaram, Chennai-45. ... Petitioner in W.P.2433/2007

3. M/s. Yem Pee Yem Investments P. Ltd,
No.28 Dr. Alagappa Road
Chennai-84

4. M/s. G.P. Asia Ltd,
No.5 Kumarappa Chetty Street
Periamet, Chennai-34. ... Petitioners 3 and 4 in W.P.8196/2007

M/s. Hamosons Exports Private Ltd,
rep. by its Managing Director
Moosa Ahmed, H.M. Centre, I Floor,
No.15-A, Nungambakkam High Road
Chennai-34.

2. M/s. T.S. Hajee Moosa & Co
rep by its Partner
Moosa Ahmed
Plot No.33 & 34
Thiru Vi ka Industrial Estate
Guindy, Chenai-32. ... Petitioner in W.P.12099/2007

1. M/s. Famex Exports Private Ltd,
rep by its Managing Director
Moosa Ahmed,
No.33 Kalaimagal Nagar
Guindy Industrial Estate
Ekkattuthangal
Chennai-97.

2. M/s. H.M. Textiles
Rep by its Proprietors
M/s. Amex Garments Private Ltd
No.74 Godown Street
Chennai-1. ... Petitioner in W.P.12054/2007

Mrs. Tasneem Rizwan ... Petitioner in W.P.3895/2007

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M/s. Blue Bell Textiles Ltd
Mulvoy Village
rep by its Managing Director
N. Venugopal ... Petitioner in W.P.3746/2007

M/s. Envee Constructions
No.9 6th Street,
T.N. Nagar.,Palanipet
Arakkonam-2
rep by its Managing Partner
Mrs. Vasantha Venugopal ... Petitioner in W.P.3747/2007

1. M/s. Venus Mrketing Services P Ltd,
rep by its Directors
C-26 Anna Nagar East
Chennai-102

2. T.S. Mani alias Mr.T.s. Pitchumani
3. P. Saraswathi

4. M/s. MBO Computers India (P) Ltd
rep by its Director
C-26 Anna Nagar East
Chennai-102. ... Petitioners 1 to 4 in W.P.4820/2007
Petitioners 4,2,3 and 1 in W.P.4821/07

S. Prabhu
Sole Proprietor
M/s. Palaniappa Sago and Starch Industry
Vadakumarak Village
Sarovoy P.o
Attur Taluk
Salem District. 636 121. ... Petitioner in W.P.4321/2007

Mr. Sathi Reddy ... Petitioner in W.P.10051/2007
N. Gajendran ... Petitioner in W.P.1681/2007
N. Somasundaram ... Petitioner in W.P.5345/2007
Mrs. Soroj Jain ... Petitioner in W.P.5655/2007
Mr. Babulal Surana ... Petitioner in W.P.9904/2007
Smt. Lalitha Kanwar ... Petitioner in W.P.9905/2007

Vs

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Canara Bank
represented by its Chief Manager
No.131, A.N. Street
Chennai-79 ... Respondent in W.P.Nos.8517, 8518, 9291

1. Union of India
represented by its Secretary
to Government
Ministry of finance
Department of Finance
New Delhi. ... Respondent in
W.P.42496/2006
R1 in W.P.10571/07
R1 in W.P.46476/06
R1 in W.P.2433/07 and R2 nil
R1 in W.P.12741/07
R1 in W.P.12733/07
R2 nil
R1 in W.P.11244/07
R1 in W.P.1797/07 and R2 nil
R1 in W.P.10977/07 and R2 nil
R1 in W.P.13198/07
R1 in W.P.11079/07
R1 in W.P.8196/07
R1 in W.P.11078/07
R1 in W.P.12099/07
R1 in W.P.12054/07
R1 in W.P.4321/07
R1 in W.P.3895/07
R1 in W.P.3746 & 3747/07
R1 in W.P.5345/07
R1 in W.P.5655/07

2. Union Bank of India
Regional Office
649/50 Oppanakara Street
Coimbatore ... R2 in W.P.42496/06

Authorised Officers
Indian Overseas Banks
Mylapore Branch
No.177 Lay Church Road,
Mylapore, Chenna-4 ... R2 in W.P.46476/2006

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The Authorised Officer
The karur Vysya Bank Ltd,
Main Branch
315 Kumaran Road
Tirupur ... R2 in W.P.12741/2007

2. Reserve Bank of Indian
Central Office Building
Shahid Bhagtsingh Road
Bombay- 400 001
...R2 in W.P.12733 of 2007
R2 in W.P.11244 of 2007 R3 nil
R2 in W.P.10571 of 2007 R3 nil
R2 in W.P.2443 of 2007
R2 in W.P.11079 of 2007
R2 in W.P.8196 of 2007
R2 in W.P.11068 of 2007
R3 in W.P.3895 of 2007
R4 in W.P.3746 and 3747 of 2007

3. The Chief Manager and Authorised
Officers Bank of India
Coimbatore Zone
324, Oppanakara Street
Coimbatore- 641 001 R3 in W.P.12733/07

3. The Debt Recovery Tribunal I
Spencer Towers
Anna Salai, Chennai-2. ... R3 in W.P.11244 of 2007
... R3 in W.P.11079 of 2007
... R3 in W.P.11068 of 2007

4. State Bank of Travancore
Mount Road Branch
162, Anna Salai,
Chennai-2 ... R4 in W.P.11244/07

Punjab National Bank
Regional Office
Salem. ... R2 in W.P.1797/2007

1. The Debts Recovery Tribunal I
VI FloorSpencers towers
Madras-2.

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2. The Authorised Officer
State Bank of Indian
commercial Branch
Palar Towers MBT Road
Walajapet ....respondents 1 and 2 in W.P.22241/2006

2. Repco Home Finance Ltd,
No.2897 and 2898 , south Mada Street
Thanjavur- 613 009.

3. Tha Authorised officer
Repco Home Finance
Repco Towers, North Usman Road
T. Nagar, Chennai ... RR2 and 3 in W.P.10977/07

3. The Authoised Officer
Indian Bank Circle
Office, Dharmapuri ...R3 in W.P.10571/07

The Authorised Office
Syndicate Bank
Oppanakara Street,
Coimbatore ... Respondent in W.P.10532 of 2007

1. The Union of India
represented by the Secretary to
Government, Banking and Law,
New Delhi. 110 001

2. The Lakshmi Vilas Bank
represented by its Chief Manager
Salem Main Road,
Karthaparai, Karur- 639 006. RR1 and 2 in W.P.10116 of 2007

3. Chief Manager
Indian Bank
Asset Recovery management
Branch, 4 Floor
Circle Office
Building, 55 Ethiraj Salai,
Chennai-8.

4. Indian Bank Ranipet Branch rep by its
Assistant General Manager
Vellore Region
Ranipet Industrial Complex
Ranipet, Vellore district ... RR3 and 4 in
W.P.2443/07

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2. The Authorised officer
State Bank of India
Redfields Coimbatore- 641 018 R2 in W.P.13198/07

4. The Federal Bank Ltd,
Registered office at Alwaye (Kerala)
Having Branch Office
at Mount Road, Chennai-2. ... R4 in W.P.11079/07

1. The Debt Recovery Tribunal II
Anna Salai, Chennai

2. Tamilnadu Mercantile Bank Ltd,
George Town Branch
Chennai-1.

3. M/s. G.D. Nadar Paper Co,
No.39 Anderson Street, ISt Floor
Chenna-1

4. Mr.K. Dhinakaran
Partner
M/s. G.D. Nadar Paper Co
7 Friends Avenue
Arumbakkam, Chennai. ... RR1 to 4 in W.P.15192/2007

1. State Bank of India Region II
Zonal office, No.21/86 Rajaji Salai
Chennai-1.

2. The Authorised Officer
State Bank of India
No.34 Kosamada Street
Thiruvannamalai- 6060 601.

3. The Chief Manager
State Bank of India
Thiruvannamalai ... RR1 to 3 in W.P.12090 of 2007

1. Ind bank Housing Ltd,
rep by its Company Secretary
Authorsed Officer
Corporate Office at
480 anna Salai, III floor
Nandanam, Chennai- 35.

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2. Union of India
rep by the Secretary to Government
Ministry of Finance
North Block, New Delhi. ... Respondents 1 and 2 in W.P.2433/07

3. UTI Bank Ltd,
Central Office
Market Towers F
13th Floor,
Cuffe Parade
Colaba, Mumbai-5.

4. UTI Bank Ltd,
No 82 Dr. Radhakrishnan Salai
Chennai-4. RR3 and 4 in W.P.8196/07

4. UCO Bank
International Banking Branch
328 Thambu Chetty Street
Chennai-1 .. R4 in W.P.11068 of 2007

2. The Debts Recovery Tribunal II
No.770A Anna Salai, Spencer's Towers
4th Floor, Chennai-2

3. M/s. Canara Bank
rep by its Authorised
Officer Asset Recovery management Branch
Spencer's Towers -II
First Floor
No.770-A, Anna Salai
Chennai- 600 002 ... RR2 and 3 in W.P.12099/07 and 12054/07.

R2. The Authorised Officer
State Bank of India
Special Housing Finance Branch
No.157 Anna Salai, Chennai-2.

R4. K.V. Narendran ... RR2 and 4 in W.P.3895 / 07

2. The Authorised Officer
Indian Bank
Vellore Circle Office
Vellore District

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3. The Senior Manager
Indian Bank
Arakkonam Branch
Arakkonam, Vellore District ... RR2 and 3 in W.P.3746 & 3747 of 2007

The Authorised Officer
ING Vysya Bank Ltd,
SME Regional Office Chennai
Apex Chamber III Floor
20 Sri Thyagaayar Road
T. Nagar, Chennai-17 ... Respondents in W.P.Nos. 4820 and 4821/2007

The Indian Overseas Bank
rep by its Branch Manager
cum Authorised Officer
Leigh Bayar Branch
Salem - 639 009. ... R2 in W.P.4321/07

1. Union of India
represented by its Secretary to Government
Ministry of Finance
Department of Economic Affairs
Banking Division,
New Delhi- 110 001.

2. State Bank of India
Ambattur Branch
represented by its Chief Manager
No.73- 74C
MTH Road,
Venkatapuram
Ambattur, Chennai-53. ... Respondents 1 and 2 in W.P.10051/07

1. The Chief Manager
cum Authorised Officer
State Bank of India
Arni Branch, Arni
Thiruvannamalai District.

2. The Chief Manager
State Bank of India V Zonal Office
Chennai-1. ... Respondents 1 and 2 in W.P.1681/07

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2. The Authorised officer
Canara Bank of India
Regional Office
Kancheepuram

3. Canara Bank of India
Panapakkam Branch
Arakkonam Taluk,
Vellore District ... Respondents 2 & 3 in W.P.5345 of 2007

2. The Authorised Officer
Indian Overseas Bank
Assert Recovery Management
Central Office Annexure building
No.763 Anna Salai, Chennai-2

3. The Indian Overseas Bank
Sowcarpet Branch, Devi Complex
1st Floor No.143 NSC Bose Road
Chennai. ... RR2 and 3 in W.P.5655/07

The Authorised Officer
United Bank of India
217 R.K. Mutt Road
Mylapore, Chennai-4. ... Respondents in W.P.9904 and 9905 of 2007

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the notice of the Respondent ARM.MIS.184 2006-HSR dated 28.2.2006 issued under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 quash the same (W.P.No.8517 of 2006) 8518 of 2006 , 9291 of 2006.

2. notice ref.No.Nil dated 7.2.2006 issued by the Second respondent and quash the same (W.P.No.22241 of 2006)

Writ of Declaration declaring sub Sections 2 to 7 of Section 17 of the Securitisation and reconstruction of Financial Assets and Enforcement of security interest Act 2002 as amended and substituted by Section 10 (b) 06 the Enforcement of Security of Interest and Recovery of debts Laws (Amendment) Act 2004 and 30 of 2004 as ultra vires unconstitutional and illegal in W.P.42496/2006, 46476 of 2006, 12741 of 2007, 1797 of 2007, 10977/2007, 10532 of 2007, 4820 and 4821/ 2007, 4321/2007, 9904 and 9905 of 2007.

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2. declaring Sections 17 (2) to 17(4) and 17(2) to 17(7 ) of Securitisation and Re-constructions of Financial Assets and Enforcement of Security Interest Act 2002 as ultra vires unconstitutional and illegal in (W.P.12733/2007 and W.P.11244 of 2007, 10571/2007, 2443/07, 13198/07, W.P.11079/07, W.P.8196/07, 11068/07, 12099/07, W.P.12054/2007, 3895/07, 3746 and 3747/07, 5345/07, 5655/07.

2.a. (Act 54 of 2002) as substituted by Section 10 of the Enforcement of Security of Interest and Recovery of Debt Laws Amendment Act 2004 as constitutional (W.P.2433/07)

3. declaring that Sec 17 of Securitization Act and reconstruction of Financial Assets and Enforcement of Security interest Act as unconstitutional illegal W.P.10116/2007.

4. declaring Sub Section (2) (3) and (4) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 as amended and Substituted by Section 10 (b) of the enforcement of Security of Interest and Recovery of Debts laws (Amendment) Act 2004 and the notice dated 9.6.2006 issued by the Second Respondent and possession notices dated 13.2.2007 issued by the second respondent in ultra vires unconstitutional invalid and illegal (W.P.12090/07)

Writ Petitions filed under Section 226 of the Constitution of India to issue a writ of Certiorarified Mandamus (i) to call for the proceedings of the first respondent dated on 8.3.2007 holding that two other witnesses 1. Mr. Varuvel (2) Kamaraj are not necessary for cross Examination by the Petitioner (ii) And the proceedings dated 26.3.2007 containing insufficient evidence of Cross Examination of PW1 Mr. Anbalagan certaining blanks scored by Cross marks and to quash those interlinked proceedings directing the Ist respondent to make PW 1 Mr. Anbalagan for Cross Examination afresh and to make Mr. Varuvel and Mr. Kamaraj for Cross Examination inO.A.No.159 of 2003 on the of D.R.T.II Chennai and directing to grant a certified copy of the complete record of evidence after cross Examination in. (W.P.No.5192 of 2007)

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the second respondent to regularise and accept one time settlement of the loan account No.10403031969 of the Petitioner with the second respondent in W.P.10051 of 2007.

Writ of certiorarified Mandamus to call for the records pertaining to the issue of possession notice dated 6.11.2006 duly

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issued under Rule 8 (1) of the Security Interest (Enforcement) Rules 202 and the consequent issue of sale notice dated 15.11.2006 under Section 8(6) of the Security interest(enforcement) Rules 2002 duly issued by the Chief Manager cum Authroized Officer State Bank of India Arani Branch Arani, Thiruvannamalai District namely Ist Respondent and quash the same and direct the respondents to release the Petitioners properties from the clutches of the sarfaesi Act (W.P.1681 of 2007)

Mr. Vijay Narayan SC
for M/s. Narmadha Sampath
and A. Saravanan ... Petitioner in W.P.8517, 8518, 9291/2006 W.P.11244/2007, 2443/2007, 11079/2007, 8196/2007, 11068/2007

MR.K. Venkatachalapathy SC
for M/s. M. Kamalanathan
R. Kamaraj
K.B. Vivekananthan ...Petitioner IN W.P.42496/2006

M/s. Geetha Rajasekar ... Petitioner in W.P.46476/2006

Mr. B. Raviraja ... Petitioner in W.P.12741/2007

Mr.K. Venkatasubbaraju ... Petitioner in W.P.12733/2007

M/s. D. Meera and
Swaminathan ... Petitioner in W.P.1797/2007, 10977/07, 10532/07, 4820 and 4821/07, 4321/07, 9904 and 9905/07

M/s. V. Kalyanaraman
and Shanmugasundaram ... Petitioner in W.P.22241/06

Mr.K. Moorthy ... Petitioner in W.P.10571/07

Mr.P. Seshubalan Raja ...Petitioner in W.P.10116/07

MR. T.L. Thirumalaiswamy ... Petitioner in W.P.13198/07

Mr.K. Selvaraj ... Petitioner in W.P.15192/07

Mr.P.V.S. Giridhar Associates ... Petitioner in W.P.12090/07

Mr. Sathish Parasaran ... Petitioner in W.P.2433/07

Mr. Jayesh Dolia for
M/s. M.S. Shanmugha Sundaram ... Petitioner in W.P.12099/07

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Mr.M.S. Shanmugaseundarm ... Petitioner in W.P.12054/07

Mr.G. Jeremiah ... Petitioner in W.P.3895/07, 3746 and 3747/07 , 5345/07, 5655/07

Mr.K. Mohana Murali ... Petitioner in W.P.10051/07

Mr.D. Ashok Kumar ... Petitioner in W.P.1681/07

Mr.V. Paul Doss for
Mr.N. Srinivasan
M/s. Sampath Kumar Associates
for Respondent ... Respondent in W.P.8517, 8518, 9291

M/s. K. Rajasekar ... R2 in W.P.42496/2006 R1 in No Appearance

Mr.V.T. Gopalan SG and SC
for Mr.F.B. Benjamin George

R2 in W.P.46476 of 2006 R1 not ready

R1 in W.P.12741 of 2007 R2 NR

R3 in W.P.12733 of 2007 NR 1 and 2

R1 in W.P.11244 of 2007

NR R2, RR 3 and 4 No. Appearance

R1 in W.P.22241/2006 (R2 NR)

R1 in W.P. 13198/2006 R1 & R2 no appearance

R1 in W.P.12054/2007
RR2 and 3 NA
R2 in W.P.4321/2007 R1 N.A
RR2 and 3 in W.P.5655/2007
NR R1
Respondent in W.P.9904, 9905/07
Mr.V.T. Gopalan, SG and SC for
M/s. T. Srinivasa Mohan
for RR2 and 3 in NR W.P.5345/2007 R1 in W.P.12099/07

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Mr.M. Sathyanarayanan

R2 in W.P.1797 of 2007
R1 NA
RR1 and 3 No. Appearance
R2 NR in W.P.10977/07
R1 No appearance RR2 and 3 NR
W.P.10571/2007
No app. in W.P.10532/2007

MR.V. Radhakrishnan .. R2 , R1 No app.

Mr.Jayesh B. Dolia
for M/s. Aiyar and Dolia .. R3 in W.P.2443/2007
1, 2 & 4 NR
Respondent in W.P.2433/2007 R4
in W.P.3746 and 3747 of 2007 R2 NA
RR1 and 3 NR

Mr. Srinath Sridevan ... R4 i W.P.11079 of 2007
R3 Tribunal
RR 1 and 2 NR

R4 in W.P.11068/2007
RR1to 3 NA

M/s. Sethuraman .. R2 in W.P.15192/07 and 1,3, & 4 NR

M/s. Ramalingam Associates .. Respondents in W.P.12090/07

M/s. V.V. Sivakumaran
Chitra Narayan ... for R4 in W.P.8196/2007 R1 NA, RR2
and 3 NR

Mr.S.Sethuraman
and
M/s. V.R. Gopalrathinam ... R2 in W.P.3895/2007 1,3, and 4 NR

P. Raghunathan for
M/s. T.S. Gopalan and Co ... Respondent in both W.Ps.
4820, 4821/07

MR.P.D. Audikesavalu ... R2 in W.P.10051/2007 R1 NR,
Respondent in W.P.1681/2007

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O R D E R

(Order of the Court was made by Hon'bleTheChief Justice)

The constitutional validity of provisions of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 as amended by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment Act) Ordinance 2004 (Act 30 of 2004) is challenged in these writ petitions under Article 226 of the Constitution of India.

2. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as 'the Act') has been enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected thereto. The Act enables the banks and financial institutions to realise long-term assets, manage problems of liquidity, asset liability mis-match and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The Act further provides for setting up asset reconstruction companies which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured assets and take over the management of the business of the borrower. In Mardia Chemicals Limited vs. Union of India, 2004 (4) S.C.C 311, the constitutional validity of the Act, except the provisions of Sub-section (2) of Section 17of the Act, has been upheld by the Supreme Court. The findings of the Supreme Court, as summed up in paragraph-80 of the judgment, read as follows: -

> " 80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debts Recovery Tribunal. The abovenoted provisions are for the purpose of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows:
>
> 1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days' notice before proceeding to take any of the measures as provided under sub-section

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(4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/ knowledge of the borrower without giving rise to any right to approach the Debts Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debts Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held in this behalf, we find that the requirement of deposit of 75% of the amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

3. Section 17 of the Act prior to the amendment reads as

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follows: -

SECTION 17 – Right to appeal:

"(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which measures had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cents of the amount chaired in the notice referred to in Sub-section (2) of Section 13. Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

4. Section 17 of the Act was amended by Act 30 of 2004 in the light of the decision in Mardia Chemical's case and the amended provisions were brought into force with effect from 29.12.2004. The provisions of Section 17 of the Act, after the amendmen, read as follows: -

" (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, (may make an application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which measures had been taken.

(Provided that different fees may be prescribed for making the application by the borrower and the person other than then borrower).

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(Explanation: For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of Section 17).

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of the Act and the rules made thereunder.

(3) The Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the Secured creditor are not in accordance with the provisions of this Act and the rules made there under, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may be order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

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(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to

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one or more the measures specified under sub-section (4) of Section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making such application made under sub-section (1)

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal, shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and land the rules made thereunder."

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5. It is seen that by the amendment, the legislature has deleted sub Section (2) of Section 17 of the Act, which was held to be unconstitutional by the Supreme Court in Mardia Chemical's case and sub sections 2 to 6 were inserted in section 17 of the Act and original sub section (3) is renumbered as sub section (7). The principal contention of the petitioners is that the amended provisions of Section 17 of the Act are contrary to the judgment of the Supreme Court in Mardia Chemical's case.

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6. The contention is that the remedy of the application filed under Section 17 of the Act, which is declared to be in nature of suit by the Supreme Court is totally taken away by the amendment and in any event, the remedy is now reduced to only an empty formality and does not protect the rights of the borrowers, mortgagers and guarantors. The contention is that the scope of the jurisdiction of the Debt Recovery Tribunal under Section 17 of the Act has been restricted only to ascertain the compliance of the provisions of the Act alone and therefore the amendment is wholly arbitrary and violative of Article 14 of the Constitution of India.

7. We have heard Mr. Vijay Narayan, learned senior counsel, Mr. K. Venkatapathy, learned senior counsel, Mr. Sathish Parasaran, Ms. D. Meera, Mr.M.S.Shanmugasundaram, Mr. K. Selvaraj, Mr. K. Venkatasubbaraju, Mr.G. Jeremiah, Mr.K.Mohana Murali, Mr. K. Moorthy, Mr.T.L.Thirumalaisamy, Mr. V. Kalyanaraman, Mr. P. Seshubalan and Mr.B.Ravi Raja, learned counsel appearing for the petitioners in the respective writ petitions and Mr. V.T. Gopalan, learned Additional Solicitor General appearing for Union of India, Mr.T.S.Gopalan, Mr. Srinath Sridevan, Mr. V. Paul Doss, Mr. N.V. Srinivasan, Mr.K.Rajasekaran, Mr. Jayesh Dolia, Mr.S.Sethuraman, Mr.V.V. Sivakumar, Mr. P.D. Audikesavalu, Mr. V. Radhakrishnan and Mr. M. Sathyanaranan, learned counsel appearing for the respondents/banks and financial institutions in the respective writ petitions.

8. Learned counsel appearing for the petitioners strenuously contended that in Maridia Chemical's case, the Supreme Court has clearly held that the proceedings under Section 17 of the Act are in lieu of Civil Suit, which remedy is already available but barred under Section 34 of the Act. Our attention was drawn to the observations in paragraphs 59, 62 and 71 of the judgment, which read as follows:-

> " 59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of

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the Act in the present case. We may refer to a decision of this court in GANGA BAI v. VIJAY KUMAR where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p.397, para 15)

:There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred bty statute one may at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

62. As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the court of the first instance under the Code of Civil Procedure. No doubt, in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act."

" 71. Arguments have been advanced as to how far principles of lender's liability are applicable. Whatever be the position, however, it cannot be denied that the financial institutions, namely, the lenders owe a duty to act fairly and in good faith. There has to be a fair dealing between the parties and financing companies/institutions are not free to ignore performance of their part of the obligation as a party to the contract. They cannot be free from

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it. Irrespective of the fact as to whatever may have been held in decisions of some American courts, in view of the facts and circumstances and the terms of the contract and other details relating to those matters, that may or may not strictly apply, nonetheless, even in absence of any such decisions or legislation, it is incumbent upon such financial institutions to act fairly and in good faith complying with their part of obligations under the contract. This is also the basic principle of the concept of lender's liability. It cannot be a one-sided affair shutting out all possible and reasonable remedies to the other party, namely, borrowers and assumes all drastic powers for speedier recovery of NPAs. Possessing more drastic powers calls for exercise of higher degree of good faith and fair play. The borrowers cannot be left remediless in case they have been wronged against or subjected to unfair treatment violating the terms and conditions of the contract. They can always plead in defence deficiencies on the part of the banks and financial institutions."

9. Relying on the above observations, it is contended that by virtue of amendment, the scope of Section 17 of the Act is restricted as to the compliance of the provisions of the Act alone and various other grounds such as demand of amount has been recovered and failure to follow the mandatory guildelines of Reserve Bank of India and offer of one time settlement, calculation of interest and nature of secured creditors and all the incidental questions cannot be gone into by the Debt Recovery Tribunal.

10. We are afraid that the contention is totally mis-conceived. The provisions of Section 17(1) of the Act provides remedy for the borrower/guarantor/mortgagor to challenge the action of the Bank under Section 13(4) of the Act before the Debt Recovery Tribunal. The Debt Recovery Tribunal is required to decide whether the action of the Bank/Financial Institutions, under Section 13(4) is in accordance with the provisions of the Act and the rules framed thereunder. It is open to the borrower/guarantor/mortgagor to demonstrate before the Debt Recovery Tribunal that resort to Section 13 of the Act is not permissible by law. In a given case, the claim of the Bank/Financial Institutions may be barred by limitation or there may be cases, where the adjustment of the amount paid is not reflected in the notice or the calculation of interest may not be in accordance with the contract between the parties. Needless to

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say that all such grounds, which render the action of the Bank/Financial Institutions illegal can be raised in the proceedings under Section 17 of the Act before the Debt Recovery Tribunal.

11. Learned Additional Solicitor General and the learned counsel appearing for banks and financial instituions fairly stated that all the objections which can be legally raised in the reply to the notice under Section 13(2) of the Act can also be raised in the proceedings under Section 17(1) of the Act. It would be for the Debt Recovery Tribual to decide in each case whether the action of the bank is in accordance with the provisions of the Act and is legally sustainable.

12. In our opinion, the writ petitions are devoid of merit and hereby dismissed with liberty to the writ petitioners to raise all the contentions before the Debt Recovery Tribunal as permissible by law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

**To**

1. The Chief Manager
Canara Bank
No.131, A.N. Street
Chennai-79

2. The Secretary to Government
Union of India
Ministry of finance
Department of Finance
New Delhi.

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3. Union Bank of India
Regional Office
649/50 Oppanakara Street
Coimbatore -1.

4.The Authorised Officers
Indian Overseas Bank
Mylapore Branch
No.177 Lay Church Road,
Mylapore, Chenna-4

5.The Authorised Officer
The karur Vysya Bank Ltd,
Main Branch
315 Kumaran Road
Tirupur

6.Reserve Bank of Indian
Central Office Building
Shahid Bhagtsingh Road
Bombay- 400 001

7. The Chief Manager and Authorised Officer, Bank of India
Coimbatore Zone
324, Oppanakara Street
Coimbatore- 641 001

8.The Debt Recovery Tribunal I
VI Floor,
Spencer Towers
Anna Salai, Chennai-2.

9. State Bank of Travancore
Mount Road Branch
162, Anna Salai,
Chennai-2

10.Punjab National Bank
Regional Office
Salem.

11.The Authorised Officer
State Bank of India
commercial Branch
Palar Towers MBT Road
Walajapet

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12.Repco Home Finance Ltd,
No.2897 and 2898
south Mada Street
Thanjavur- 613 009.

13.Tha Authorised officer
Repco Home Finance
Repco Towers
North Usman Road
T. Nagar, Chennai

14. The Authoised Officer
Indian Bank Circle
Office, Dharmapuri

15.The Authorised Office
Syndicate Bank
Oppanakara Street,
Coimbatore

16. The Secretary to Government
The Union of India
Banking at Law,
New Delhi. 110 001

17.The Chief Manager
Lakshmi Vilas Bank
Salem Main Road,
Karthaparai, Karur- 639 006.

18. Chief Manager
Indian Bank
Asset Recovery management
Branch, 4 Floor
Circle Office
Building, 55 Ethiraj Salai,
Chennai-8.

19.The Assistant General Manager
Indian Bank Ranipet Branch
Vellore Region,
Ranipet Industrial Complex
Ranipet, Vellore district

20.The Authorised officer
State Bank of India
Redfields Coimbatore- 641 018

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21. The Federal Bank Ltd,
Registered office at Alwaye (Kerala)
Having Branch Office
at Mount Road, Chennai-2.

22.The Debt Recovery Tribunal II
770 A Anna Saai, Spencer Towers 4th Floor
Chennai. 2

23.Tamilnadu Mercantile Bank Ltd,
George Town Branch
Chennai-1.

24.State Bank of Indian Region II
Zonal office
No.21/86 Rajaji Salai
Chennai-1.

25.. The Authorised Officer
State Bank of India
No.34 Kosamada Street
Thiruvannamalai- 6060 601.

26. The Chief Manager
State Bank of India
Thiruvannamalai

27.Ind bank Housing Ltd,
the Company Secretary/
Authorsed Officer
Corporate Office at
480 Anna Salai,
Chennai- 35.

28.UTI Bank Ltd,
Central Office
Market Towers F
13th Floor,
Cuffe Parade
Colaba, Mumbai-5.

29.UTI Bank Ltd,
No 82 Dr. Radhakrishnan Salai
Chennai-4.

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30.UCO Bank
International Banking Branch
328 Thambu Chetty Street
Chennai-1

31. The Authoised Officer
Canara Bank
Asset Recovery Management Branch
Spencer Towers II First Floor
No.770A Anna Salai, Chennai-2.

32. The Authorised Officer
State Bank of India
Special Housing Finance Branch
No.157 Anna Salai, Chennai-2.

33. The Authorised Officer
Indian Bank
Vellore Circle Office
Vellore District

34. The Senior Manager
Indian Bank
Arakkonam Branch
Arakkonam, Vellore District

35.The Authorised Officer
ING Vysya Bank Ltd,
SME Regional Office Chennai
Apex Chamber III Floor
20 Sri Thyagaayar Road
T. Nagar, Chennai-17

36.The Branch Manager
cum Authorised Officer
Indian Overseas Bank
Leigh Bayar Branch
Salem - 639 009.

37. The Secretary to Government
Ministry of Finance
Department of Economic Affairs
Banking Division,
New Delhi- 110 001.

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38. The Chief Manager,
State Bank of India
Ambattur Branch
No.73- 74C
MTH Road,
Venkatapuram
Ambattur, Chennai-53.

39.The Chief Manager
cum Authorised Officer
State Bank of India
Arni Branch, Arni
Thiruvannamalai District.

40. The Chief Manager
State Bank of India,
V Zonal Office
Chennai-1.

41. The Authorised officer
Canara Bank of India
Regional Office
Kancheepuram

42.Canara Bank of India
Panapakkam Branch
Arakkonam Taluk,
Vellore District

43.The Authorised Officer
Indian Overseas Bank
Assert Recovery Management
Central Office Annexure building
No.763 Anna Salai, Chennai-2

44. The Indian Overseas Bank
Sowcarpet Branch, Devi Complex
1st Floor No.143 NSC Bose Road
Chennai.

45.The Authorised Officer
United Bank of India
217 R.K. Mutt Road
Mylapore, Chennai-4.

1 cc to M/s. Srinath Sridevan, Advocate, sr. 34407
2 ccs to RM. B. Sundar, Advcoate, sr. 34295
3 ccs to Mr. J. Srinivasa Mohan, Advocate, sr. 34415 to 34417

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4 ccs to M/s. Sampath Kumar, Associates, Sr. 34239, 34246 to 34248
1 cc to Mr. B. Raviraja, Advocate, sR. 34227
2 ccs to M/s. Rangarajan, and Prabhakharan, Advocate, Sr. 34130
1 cc to Mr.K. Moorthy Advocate, sr. 34014
2 ccs to M/s. Ramalingam and Associates, sr. 33976
1 cc to M/s. T.S. Gopalan, and Co, Sr. 33961
3 ccs to M/s.Narmadha Sampath, Advocate, sr. 33868, 33872, 33873
4 ccs to Mr.A. Saravanan, Advocate, SR. 33869 to 33871 and 33874
1 cc to Mr.T.L. Thirumalaisamy, Advocate, Sr. 33803
1 cc to Mr. Geetha Rajashekaran, Advocate, sr. 33756
4 ccs to M/s. G. Jeremiah and D. Rajalakshmi Sr. 33757 to 33759, 35157
1 cc to Mr.M. Kamalanathan, Advocate, Sr. 33695
1 cc to mr.M. Sathyanarayanan, Advocate, sr. 33591
2 ccs to Mr.P.D. Audikesavalu, Advocate, Sr. 33499, 33500
5 ccs to MR. F.B. Benjamin George, Advocate, Sr. 33491 to 33493, 33496, 33497
9 ccs to Mr.D. Meera, Advocate, Sr.34001 to 34009

W.P. Nos.8517, 8518, 9291, 42496, 46476 of 2006 and 12741, 12733, 11244, 1797, 22241, 10977, 10571, 10532, 10116, 2443, 13198, 11079, 15192, 12090, 2433, 8196, 11068, 12099, 12054, 3895, 3746, 3747, 4820, 4821, 4321, 10051, 1681, 5345, 5655, 9904 and 9905 of 2007

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